

Remarks

Claims 11 through 21 were presented for examination in the present application. The Office Action requires restriction between the container of Invention I (claim 11) and the closure of Invention II (claims 12 through 21). Applicant elects Invention II that includes claims 12 through 21. Applicant cancels claim 11. Thus, claims 12 through 21 are presented for consideration upon entry of the instant amendment. Applicant reserves the right to file a divisional application directed to the subject matter of the non-elected claim.

Applicant notes that the International Search Report dated September 20, 2004 submitted in the Information Disclosure Statement mailed December 29, 2005 was not initialed on Form PTO-1449 included with the Office Action. Applicant respectfully requests a Form PTO-1449 including Examiner's initials on all references submitted in the information disclosure submitted December 29, 2005.

Claim 20 is objected to for an informality. In the instant amendment, Applicant has amended claim 20 to depend from claim 12 as suggested by the Examiner. Accordingly, favorable reconsideration and withdrawal of this objection is respectfully requested.

Independent claims 12, as well as dependent claims 13 through 16 and 21 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Publication No. 2002/0056695 to Boulange et al. (hereinafter "Boulange"). Applicant respectfully traverses this rejection for the reasons below.

Independent claim 12 provides for a closure for a container having, *inter alia*, an outer cap portion with a top wall and depending skirt portion to receive the neck of the container and at least one vent opening therein, and an inner float seal portion located within the outer cap portion, where the inner float seal portion is attached to the outer cap portion, but is movable in relation thereto. In use, the closure is attached to the container and the container is forcibly collapsed, driving any air

within the container out between the edge portion and the outer cap portion to escape through the at least one vent opening to outside the closure.

The device in Boulange does not disclose or suggest an outer cap portion with at least one vent opening through which air from the container escapes. In contrast, the Boulange patent discloses that gas is expelled between the edge seal and the closure. Furthermore, the rejection under §102(b) on page 3 of the Office Action does not provide a corresponding structure in Boulange for the vent opening of the present invention. The applicable law states, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Such is not true of the Boulange patent.

Additional support is provided in the rejection under §103(a), in which a secondary reference, Uhlig et al. U.S. Patent No. 4,392,579 (hereinafter "Uhlig"), is cited in order to provide for the deficiency of a flute/opening element in Boulange. The Office Action indicates that an opening element in Boulange is not disclosed. Thus, absent the disclosure of this element, Boulange does not anticipate the claimed invention under §102(b).

In addition, float seals are known in the art of plumbing and are typically provided in a hydrodynamic circumstance where the movement of a liquid moves the float seal to seal an opening. Thus, in order for a seal to be considered a "float seal", a degree of movement is required. Furthermore, for a float seal to function correctly, it must be substantially liquid impervious, otherwise the liquid would not move the float seal.

In contrast, Boulange provides for a closure 10, which is indicated by the Examiner as the inner float seal, that does not possess the required features of a float seal, nor does it function as a float seal. More specifically, as described above,

a float seal is movable by a liquid into the sealed position. It is clear that the closure 10 of Boulange does not move. Instead, closure 10 is fixed to the outer cap portion of the device in order to maintain the gas flow path between the closure 10 and the outer cap. Thus, Boulange does not disclose or suggest an inner float seal portion attached to the outer cap portion that is moveable in relation thereto, as recited in claim 12.

Furthermore, the expulsion of the gas from the container according to the present invention occurs by the container being forcibly collapsed. In contrast, the gas in Boulange is expelled by screwing the assembly onto the neck of a container. Collapse of the container of the present invention forces the liquid upwardly in the container to move the float seal whereas according to Boulange, this forcible collapse of the container is not required, due mainly to the fact that Boulange lacks a float seal.

In the Boulange patent, the closure 10 contended to be a float seal cannot be a float seal as it doesn't float. The movement of the float seal portion of the present invention relative to the outer cap portion is essential to the function of the invention in allowing gas to be vented from the container and preventing liquid from escaping. The Boulange device uses a microporous membrane to prevent liquid escaping. There is no movement of the cup portion to form a seal, as recited in claim 12 of the present application.

Finally, the present invention provides that any air within the container is driven out between the edge seal and the outer cap portion to escape through the at least one vent opening to the outside closure. It is clear that the gas is expelled from beneath the float seal. In contrast, the device in Boulange provides that gas which is expelled is driven through the cup portion and exits above the cup portion rather than below it. Thus, Boulange does not disclose or suggest a container to which the closure is attached, where when forcibly collapsed, any air within the container is driven out between the edge seal and the outer cap portion to escape through the at

least one vent opening to outside the closure, as recited in claim 12 of the present invention.

Accordingly, Applicants respectfully submit that independent claim 12, as well as claims 13 through 16 and 21 that depend therefrom, are patentably distinguishable over Boulange. Therefore, reconsideration and withdrawal of the §102(b) rejection of claims 12 through 16 and 21 are respectfully requested.

Dependent claims 17 through 20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Boulange et al. as described in par. 7 in view of Uhlig. Applicant respectfully traverses this rejection for the reasons below.

As stated above, Boulange does not provide for an inner float seal portion with the outer cap portion, as recited in claim 12. The addition of flutes/opening (33) as taught in Uhlig does not correct the deficiencies of Boulange. Thus, for at least these reasons provided above, dependent claims 17 through 20 are patentable over Boulange alone or in combination with Uhlig. Applicants respectfully request reconsideration and withdrawal of the rejections of claims 17 through 20.


In view of the above, it is respectfully submitted that the present application is in condition for allowance. Such action is solicited.

In view of the above, Applicant respectfully submits that all claims presented in this application are patentably distinguishable over each reference and each cited combination of references. Accordingly, Applicant respectfully requests favorable consideration and that this application be passed to allowance.

If for any reason the Examiner feels that consultation with Applicant's attorney would be helpful in the advancement of the prosecution, the Examiner is invited to call the telephone number below.

Respectfully submitted,

December 19, 2008


Pamela L. Wingood
Reg. No. 54,903
Attorney for Applicant (s)
Ohlandt, Greeley, Ruggiero & Perle, LLP
One Landmark Square, 10th Floor
Stamford, CT 06901-2682
Tel: (203) 327-4500
Fax: (203) 327-6401